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December 7, 2022

**VIA ECF**

The Honorable Sarah Netburn  
United States District Court  
Southern District of New York  
Thurgood Marshall Courthouse  
New York, NY 10007

Re: *Lynne Freeman v. Tracy Deebs-Elkenaney et. al.*, 1:22 Civ 02435 (LLS)(SN)

Dear Judge Netburn:

The Court should disregard the arguments in Plaintiff's letter submitted to the Court via email at 1:01 am on December 7, 2022 ("Pl.'s 12/7 Letter"). Rule II.C of Your Honor's Individual Practices does not authorize reply letters. Defendants (as defined in their December 5, 2022 letter to the Court (ECF 78)) believe further letter writing would not be productive and stand ready to address all issues at a conference with the Court.

One new point raised by Plaintiff's additional letter does, however, require immediate action. Mr. Passin disclosed in his letter that there are discoverable communications between Plaintiff and non-attorneys that have not been produced, including communications with "close confidantes and advisors" and communications wherein Plaintiff forwarded emails from attorneys to others. (Pl.'s 12/7 Letter at 5.) Communications with non-attorneys about a litigation are not privileged and forwarding communications with attorneys to nonparties waives the attorney-client privilege. *See, e.g., U.S. v. Stewart*, 287 F. Supp. 2d 461, 464 (S.D.N.Y. 2003) (defendant's email with counsel "was clearly protected by her attorney-client privilege ... until she waived that privilege by forwarding a copy of the e-mail to her daughter"). These communications should not be listed on a privilege log—they need to be produced immediately so that they can be addressed at Plaintiff's December 14 deposition.

Finally, Defendants are working to address to confidentiality concerns Mr. Passin has now raised and are taking steps to seal ECF 78 and file a redacted copy concurrent with their forthcoming application to seal and provide a redacted copy of ECF 78-3.

We again thank the Court for its time and attention to this matter.

Respectfully submitted,

/s/ Benjamin S. Halperin

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Cc: All counsel of record (via ECF)